

**DW 04-020**

**FRYEBURG WATER COMPANY**

**Investigation into Water Quality**

**Order Scheduling a Status Conference Regarding the  
Replacement of the Transmission Main under the Saco River**

**ORDER NO. 24,633**

**June 8, 2006**

Appearances: Upton & Hatfield, LLP by Russell F. Hilliard, Esq. on behalf of Fryeburg Water Company; F. Anne Ross, Esq. and Rorie Hollenberg, Esq. on behalf of the New Hampshire Office of Consumer Advocate; William Black, Esq. on behalf of the Maine Public Advocate; and Suzanne Amidon, Esq. on behalf of Commission Staff.

**I. PROCEDURAL BACKGROUND**

On February 24, 2004, the New Hampshire Public Utilities Commission (Commission) opened Docket No. DW 04-020, Fryeburg Water Company (Fryeburg), Investigation into Water Quality.<sup>1</sup> On June 2, 2005, the Commission issued Order No. 24,471 which created Phase II of Docket No. DW 04-020 to address engineering solutions to the water quality problems. Subsequently, on December 9, 2005, the Commission issued Order No. 24,559 in Docket No. DW 04-020, which scheduled a prehearing conference for January 23, 2006, to hear Fryeburg's "definitive and detailed testimony" regarding the implementation of an engineering improvement plan to address the water quality issues experienced by East Conway customers as a result of the 1883 cast iron transmission main.

At the prehearing conference, Fryeburg offered that Pennichuck Corporation (Pennichuck) and the Company were in negotiations regarding Pennichuck's interest in acquiring the New Hampshire assets of Fryeburg. Fryeburg also stated that the Company had begun

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<sup>1</sup> For a more detailed procedural background, see Order No. 24,559 (December 9, 2005) slip op at 1-2, Order No. 24,594 (March 3, 2006) at 1-4.

drilling test wells west of the Saco River in West Fryeburg, Maine, which would be used to supply water to the New Hampshire customers located in East Conway.

Following the January 23, 2006 prehearing conference, the Commission issued Order No. 24,594 (March 3, 2006). The Commission found that “Fryeburg, to the detriment of its customers, has too long avoided its obligations and too slowly pursued both an engineering solution and a sale alternative.” Slip op at 11. The Commission required that Fryeburg make periodic reports to the Commission regarding, among other things, the Company’s efforts to locate a source of water for a well, and the progress of negotiations with Pennichuck.<sup>2</sup> In addition, the Commission scheduled a status conference on May 3, 2006.

Pursuant to Order No. 24,594, Fryeburg filed status reports on February 27, 2006, April 3, 2006 and May 1, 2006. The status report filed on May 1, 2006, stated that Pennichuck was no longer interested in purchasing Fryeburg’s New Hampshire assets.

At the status conference on May 3, 2006, the Commission ordered that Fryeburg provide the following information to the Commission: the minutes of Fryeburg’s board of directors meeting of April 4, 2006; a map with annotations to indicate the location of the main and the various well sites under consideration; all communications between Fryeburg and Pennichuck relative to the proposed sale; and all communications between Fryeburg and the engineering firm of Woodard and Curran regarding any existing or future plans to identify a location to drill a well. Fryeburg filed the requested documents on May 15, 2006.

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<sup>2</sup> The Commission also noted that its options included the consideration of imposing additional penalties against the officers and agents of Fryeburg pursuant to RSA 365:42 and referral to the Attorney General pursuant to RSA 374:41, but held those considerations in abeyance. *See* Order No. 24,594 at 11.

Also at the May 3, 2006 status conference, the Commission urged Staff, the Office of Consumer Advocate (OCA) and any interested parties to meet in technical session to develop a recommendation for the Commission on next steps. On May 16, 2006, the Staff, the OCA and Robert and Nancy Swett filed a letter with the Commission indicating their recommendations. On May 26, 2006, the Town of Conway filed a letter with its recommendations. Both letters recommended replacement of the 1883 cast iron main that serves the East Conway customers of Fryeburg. The Town of Conway also made specific recommendations for the oversight of the project, the bidding process for the work, and Commission review and deadlines for the various components of the project.

On June 5, 2006, Fryeburg filed a letter with the Commission including copies of its board of directors meeting minutes of May 24, 2006, and a June 1, 2006 letter from Woodard and Curran regarding the replacement of the main between Fryeburg, Maine to East Conway, New Hampshire. The minutes indicate that the board of directors approved a motion to authorize and direct Fryeburg's president to seek financing of up to \$260,000 for installation of a new four-inch main under the Saco River and connecting with Fryeburg's existing distribution system in East Conway and to obtain approval therefore from the Maine Public Utility Commission.

## **II. COMMISSION ANALYSIS**

We note that, at the May 3 hearing, Fryeburg stated that the Company had ordered an appraisal of the value of Fryeburg in its entirety in the event that the water district formed in Fryeburg, Maine was interested in acquiring the Company. Fryeburg indicated that the water district would have to buy the entire Company if the district intended to take over operation of the Fryeburg water system. We also heard that the trustees of the Maine water district were to be

elected on June 17, 2006, and that it is uncertain whether the trustees would want to acquire the entire Fryeburg water system or only the portions of the system located in the state of Maine.

Also at hearing, Fryeburg offered that it had identified possible sites for the location of a well, but that a number of problems had been identified with various locations. Fryeburg testified that one site was too close to a property line, another site was too close to some septic tanks and oil tanks, and another test well had gravel at a depth of 70 feet. Fryeburg indicated that it was in negotiations with several landowners with the intent of acquiring property that would yield an appropriate well site.

Based on the letter filed by Fryeburg on June 5, 2006, we can only conclude that further efforts to locate a suitable well site have failed or have been abandoned, and that the Company has now decided that replacement of the pipe is the best way to resolve the water quality issues experienced by customers west of the Saco River. This is a promising development, particularly since those parties providing a recommendation following the status hearing on May 3 agree that replacement of the pipe connecting East Conway with Fryeburg's water sources in Maine is the best, and perhaps the only viable alternative at this time. However, based on our experience with the Company, we have concerns similar to those expressed by the Town of Conway regarding the need to oversee the development of the engineering specifications and the implementation of the engineering plans.

In order to hear in greater detail how Fryeburg proposes to proceed, a status conference will be held at 10:00 a.m. on July 6, 2006, for the purpose of reviewing Fryeburg's proposal to replace the pipe. We direct Fryeburg to provide a more detailed report regarding the project approved at the board of directors meeting of May 24, 2006. We also require Fryeburg to

provide detail regarding the plans to obtain financing for the project and necessarily approvals from the State of Maine, the selection of a qualified engineering firm to design and implement the project, and a timetable for construction. Fryeburg must also provide any additional reports prepared by the engineering firm of Woodard and Curran. In addition, we direct Fryeburg to continue to make Woodard and Curran available to the Commission's water engineer, Douglas Brogan, so that Mr. Brogan may understand the planning and construction of the project in order that he be prepared to offer, at the July 6 hearing, his expert opinion about the project. Similarly, Fryeburg should make information about the costs and financing of such a project available to Staff.

**Based upon the foregoing, it is hereby**

**ORDERED**, that a status conference be held on July 6, 2006 at 10:00 a.m. regarding Fryeburg's proposal to replace the 1883 main delivering water to customers west of the Saco River; at which time Mr. Hugh Hastings will present to the Commission the information ordered above.

By order of the Public Utilities Commission of New Hampshire this eighth day of June,  
2006.

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Thomas B. Getz  
Chairman

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary